DAC

#5 3671

GESMER UPDEGROVE LLP
ATTORNEYS AT LAW
40 BROAD STREET
BOSTON, MASSACHUSETTS 02109-4310
Telephone: (617) 350-6800
Fax: (617) 350-6878

FAX COVER SHEET

To: Mary Watson
The Patent Place, Inc.

Fax: (703) 415-1080

Date: October 5, 2005

Pages: 10 (including cover)

From: Sunshine Limanni
Patent and Trademark Paralegal

Re: Mental Images Gmbh - Request for Reconsideration of Petition to be hand delivered (our ref. MENT-062; your ref. 05080817)

Dear Mary:

To follow my e-mail with a scan of the Renewed Petition, enclosed is a copy of the Renewed Petition (2 pages); the Response (4 pages) and the copy of the Decision of the Petition (3 pages). Accordingly, please hand deliver today the attached Renewed Petition and confirm receipt of these documents with the USPTO.

Please confirm receipt of this fax and please let us know when the Renewed Petition has been filed.

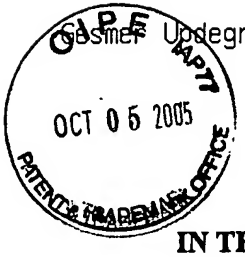
Please let me know if you have any questions!

Very truly yours,

Sunshine

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT 617-350-6800.

Sent By: _____ Time Sent: _____



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Silviu Borac
Serial No.	10/062,192
Filed:	February 1, 2002
Title:	Computer Graphics System And Computer-Implemented Method For Generating Smooth Feature Lines For Subdivision Surfaces.
Group Art Unit:	2671
Examiner:	Kimbinh T. Nguyen
Attorney Docket:	MENT-062

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-2450
Attention: Kenya A. McLaughlin, Petitions Attorney
9 Total Pages

RENEWED PETITION ENCLOSING COPY OF AMENDMENT

Dear Sir or Madam:

On Aug. 5, 2005 the undersigned filed a Petition to Revive the above-identified application (Atty Dkt. MENT-062), which had been abandoned due to prior counsel's failure to respond to an office Action mailed April 19, 2004. Substantially simultaneously, the undersigned also filed eleven other Petitions to Revive in eleven other applications abandoned by prior counsel. All eleven other Petitions were GRANTED on Aug. 18 and Aug. 22, 2005, respectively.

In the present MENT-062 case, however, we received no decision on our Petition at that time, or over the course of the next few weeks. Our associate monitoring this case, The Patent Place, Inc., of Arlington, VA, advised us on Sept. 7, 2005 that the USPTO was attempting to locate the file, and that once the file was located, it would be forwarded to the appropriate Petitions Attorney for review of the Petition. Subsequently, The Patent Place advised us that the USPTO located the file and forwarded it to Petitions on Sept. 9, 2005.

We have now been advised that the Petition in this case was DISMISSED because no amendment was included with the Petition. A copy of that decision is attached hereto.

The undersigned thanks the Petitions Attorney for review and the indication that the Petitioner qualifies for relief.

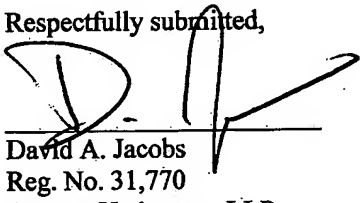
However, according to our records, just as with the eleven other Petitions we filed (and which were GRANTED), we forwarded a complete set of the Petition, Declarations, Exhibits, Amendment and all other required documents in this case, MENT-062, for filing, and filing was made in person by The Patent Place on Aug. 5, 2005.

At any rate, to address this issue and hopefully obtain a GRANT of the Petition, we are resubmitting a copy of the Amendment herewith. The USPTO is respectfully requested to reconsider the dismissal of the Petition and to GRANT the Petition. (At the suggestion of the USPTO as communicated to The Patent Place, we are resubmitting only the Amendment itself, rather than the entire Petition package, in an effort to reduce the risk of confusion. However, if the USPTO would prefer that we resubmit the entire Petition package, we stand ready to do so, and would invite instruction in that regard.)

Should questions arise, the USPTO is respectfully invited to contact the undersigned.

PTO Deposit Account: Should the PTO determine that a fee is required; the PTO is hereby authorized to charge such fee, and any other required fee to Gesmer Updegrove PTO Deposit Account No. 122315.

Respectfully submitted,



Date: October 5, 2005

David A. Jacobs
Reg. No. 31,770
Gesmer Updegrove LLP
40 Broad Street
Boston, MA 02109
Tel: (617) 350-6800
Fax: (617) 350-6878

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Silviu Borac
Serial No.	10/062,192
Filed:	February 1, 2002
Title:	Computer Graphics System And Computer-Implemented Method For Generating Smooth Feature Lines For Subdivision Surfaces.
Group Art Unit:	2671
Examiner:	Kimbinh T. Nguyen
Attorney Docket:	MENT-062

Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-2450
4 Total Pages

AMENDMENT

Dear Sir:

By his new undersigned patent counsel, and in connection with the Petition to Revive filed herewith based on failure of his prior patent counsel to respond, the Applicant hereby responds to the Non-Final Office Action mailed April 19, 2004. Please amend the above-identified application as follows.

Amendments to the Claims:

Please amend the claims as follows, without prejudice, wherein underlining identifies added material and strikethroughs identify deleted material:

Listing of Claims:

1-7. (Canceled)

8. (Currently Amended) An arrangement for generating a representation of a feature in a surface defined by a mesh representation, the mesh comprising at a selected level a plurality of points including at least one point, referred to as a vertex, connected to a plurality of neighboring points by respective edges, the feature being defined in connection with the vertex and at least one of the neighboring points and the edge interconnecting the vertex and the at least one of the neighboring points in the mesh representation, the feature generating arrangement comprising:

A. a weight vector generator module configured to generate at least one weight vector based on a parameterized subdivision rule defined at a plurality of levels, for which a value of at least one parameter differs at at least two levels in the mesh; and

B. a feature representation generator module configured to use the at least one weight vector and positions of the vertex and the neighboring points to generate the representation of the feature, wherein the feature is a smooth feature line defined in connection with the vertex and two neighboring points and edges interconnecting the vertex and the respective neighboring points, the weight vector generator module being configured to make use of the parameterized subdivision rule having a parameter value associated with each of the edges along which the smooth feature line is defined,

wherein the weight vector generator module is configured to make use of parameters associated with the edges along which the smooth feature line is defined whose values differ, and

wherein ~~as defined in claim 7 in which~~ the weight vector generator module is configured to make use of the parameters that are in relation to a subdivision rule that, in turn, reflects a sharp crease along the edges along which the smooth feature line is defined, the values of the parameters being defined in the interval [0,1], where higher values define a sharper crease, the values of the parameters at a lower level being related to the values of the parameters at a higher level being related by

$$s_1(j+1) = (\tfrac{3}{4}\, s_1(j) + \tfrac{1}{4}\, s_2(j))^2$$

and

$$s_2(j+1) = (\tfrac{1}{4}\, s_1(j) + \tfrac{3}{4}\, s_2(j))^2$$

where $s_1(j)$ and $s_2(j)$ represent the values of the parameters associated with the respective edges at level "j," and $s_1(j+1)$ and $s_2(j+1)$ represent the values of the parameters associated with the respective edges at the higher level "j+1."

9-156. (Canceled)

Remarks

Claims 1-156 were pending in this case prior to this Amendment. In response to the Office Action mailed April 19, 2004, which indicated that claims 8-52, 60-104 and 112-156 would be allowable if rewritten in independent form, the Applicant hereby cancels claims 1-7 and 9-156, and rewrites allowable claim 8 in independent form as suggested by the Examiner, without prejudice to filing a continuation application to continue prosecution of the other claims indicated by the Examiner to be allowable (claims 9-52, 60-104, and 112-156) and any other claims the Applicant may wish to pursue. This step is being taken to simplify the current case in connection with the Petition to Revive filed herewith by Applicant's undersigned new patent counsel, based on the failure of the Applicant's prior patent counsel to respond.

The Examiner is respectfully requested to consider and allow the amended claim and pass the application through to issuance.

Should questions arise, the Examiner is respectfully invited to contact the undersigned.

Respectfully submitted,

Date: Aug. 4, 2005

David A. Jacobs
Reg. No. 31,770
Gesmer Updegrove LLP
40 Broad Street
Boston, MA 02109
Tel: (617) 350-6800
Fax: (617) 350-6878

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No. 13

COPY MAILED

SEP 27 2005

OFFICE OF PETITIONS

David Jacobs
Gesmer Updegrove LLP
40 Broad Street
Boston, MA 02109

In re Application of
Silviu Borac
Application No. 10/062,192
Filed: February 1, 2002
Attorney Docket No. MENT-062

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed August 5, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration or petition under 37 CFR 1.137(b) must be submitted within TWO (2) MONTHS from the mail date of this decision. Extension of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(a)." This is **not** a final agency action within the meaning of 5 U.S.C § 704.

The above-identified application became abandoned for failure to reply to the non-final Office action mailed April 19, 2004, which set a shortened statutory period for reply of three (3) months from its mailing date. No response was received within the allowable period, and the application became abandoned on July 20, 2004. A Notice of Abandonment was mailed on November 30, 2004.

A grantable petition under 37 CFR 1.137(a)[1] must be accompanied by: (1) the required reply,[2] unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(1); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due

[1] As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

[2] In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer required by 37 CFR 1.137(c).

The instant petition lacks item (1).

The Commissioner is responsible for determining the standard for unavoidable delay and for applying that standard.

"In the specialized field of patent law, . . . the Commissioner of Patent and Trademarks is primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. The Commissioner's interpretation of those provisions is entitled to considerable deference."[3]

"[T]he Commissioner's discretion cannot remain wholly uncontrolled, if the facts **clearly** demonstrate that the applicant's delay in prosecuting the application was unavoidable, and that the Commissioner's adverse determination lacked **any** basis in reason or common sense."[4]

"The court's review of a Commissioner's decision is 'limited, however, to a determination of whether the agency finding was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'"[5]
"The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency."[6]

The standard

"[T]he question of whether an applicant's delay in prosecuting an application was unavoidable must be decided on a case-by-case basis, taking all of the facts and circumstances into account."[7]

---

[3]Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA) 1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir.1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg 849 F.2d 1422, 7 U.S.P.Q.2d (BNA 1152 (Fed. Cir. 1988) ("an agency' interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defence Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")

[4]Commissariat A L'Energie Atomique et al. v. Watson, 274 F.2d 594, 597, 124 U.S.P.Q. (BNA) 126 (D.C. Cir. 1960) (emphasis added).

[5]Haines v. Quigg, 673 F. Supp. 314, 316, 5 U.S.P.Q.2d (BNA) 1130 (N.D. Ind. 1987) (citing Camp v. Pitts, 411 U.S. 138, 93 S. Ct.1241, 1244 (1973) (citing 5 U.S.C. §706 (2)(A)); Beerly v. Dept. of Treasury, 768 F.2d 942, 945 (7th Cir. 1985); Smith v. Mossinghoff, 217 U.S. App. D.C. 27, 671 F.2d 533, 538 (D.C. Cir.1982)).

[6]Ray v. Lehman, 55 F.3d 606, 608, 34 U.S.P.Q2d (BNA) 1786 (Fed. Cir. 1995) (citing Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 77 L.Ed.2d 443, 103 S. Ct. 2856 (1983)).

[7]Id.

The general question asked by the Office is: "Did petitioner act as a reasonable and prudent person in relation to his most important business?"[8] Nonawarness of a PTO rule will not constitute unavoidable delay.[9]

Application of the standard to the current facts and circumstances

In the instant petition, petitioner maintains that the circumstances leading to the abandonment of the application meet the aforementioned unavoidable standard and, therefore, petitioner qualifies for relief under 37 CFR 1.137(a). In support thereof, petitioner asserts a response to the non-final Office action was timely transmitted via facsimile to the Office.

With regard to item (1) above, a proper reply to the non-final Office action did not accompany the petition. A proper reply might include an amendment or continuing application and must accompany any renewed petition filed.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries should be directed to the undersigned (571) 272-3222.

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

---

[8] See In re Mattulah, 38 App. D.C. 497 (D.C. Cir. 1912).

[9] See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D.D.C. 1978) for the proposition that counsel's nonawarness of PTO rules does not constitute "unavoidable" delay)). Although court decisions have only addressed the issue of lack of knowledge of an attorney, there is no reason to expect a different result due to lack of knowledge on the part of a pro se (one who prosecutes on his own) applicant. It would be inequitable for a court to determine that a client who spends his hard earned money on an attorney who happens not to know a specific rule should be held to a higher standard than a pro se applicant who makes (or is forced to make) the decision to file the application without the assistance of counsel.